IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

RSA.No. 374 of 2007()

AS.107/2005 of ADDL. DISTRICT COURT, NORTH PARAVUR
OS.228/1996 of MUNSIFF COURT, PERUMBAVOOR

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APPELLANT/RESPONDENT/DEFENDANT

SAHADEVAN,AGED 54, S/O.KELA,
KARIMPANAMKOTTIL HOUSE, MAZHUVANNOOR KARA,
MAZHUVANNOOR VILLAGE, KUNNATUNADU TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS: APPELLANTS/PLAINTIFFS

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1. BHAVANI, AGED 56, D/O.KELA,
KARIMPANAMKOTTIL HOUSE, MAZHUVANNOOR KARA,
MAZHUVANNOOR VILLAGE, KUNNATHUNADU TALUK.

2. SANTHA, AGED 47, D/O.KELA,
KARIMPANAMKOTTIL HOUSE, MAZHUVANNOOR KARA,
MAZHUVANNOOR VILLAGE, KUNNATHUNADU TALUK.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J

R.S.A. 374/2007

Dated this the 8th day of October, 2007

JUDGMENT

Defendant in O.S.228/1996 on the file of the Munsiff's Court, Perumbavoor, is the appellant. Plaintiffs are the respondents. Suit is for partition of plaint A schedule property and for injunction restraining appellant from trespassing into plaint B schedule property. According to the appellant, plaint A property originally belonged to Kela, father of appellant and respondents and on his death, properties are in their joined possession and plaint B schedule property consisting of 30 cents was given by the father to the respondents under Exts. A1 and A3 settlement deeds 1604 of 1993 and 3908 of 1993 and plaint A schedule property was retained with him and there is a varamba in between A and B schedule properties. Plaint A schedule on the death of Kela devolved on respondents and appellant and respondents demolished the varamba separating the properties and the building in the A schedule property. Even though respondents sought partition, appellant was not prepared

for the same and therefore respondents are entitled to a decree for partition as sought for contending that appellant has no right or possession over plaint B schedule property a decree for injunction was sought. Appellant in his written statement contended that father did not gifted plaint B schedule property as alleged and Kela was in possession of 60 cents out of which 36 cents was given to the appellant on 20.11.1979 under Ext.B1 family settlement agreement and as per the agreement some amounts and gold were paid to second respondent at the time of marriage and all those liabilities were discharged by appellant and only part of Ext.B1 is available as it was burnt in 1983 when house caught fire, and Ext.A1 and A3 are void and respondents did not obtain any right thereunder and are not entitled to the decree for injunction sought for.

2. Appellant also raised counter claim seeking declaration that Exts.A1 and A3 are void and respondents did not derive any right thereunder. Respondents filed written statement to the counter claim reiterating the contentions raised in the plaint. Pws1 to

3 were examined and Exts.A1 to A3 and X1 to X1(f) were marked on the side of the respondents. On the side of the appellant Dws1 and 2 were examined and Exts.B1 to B2(a) were marked. Exts.C1 to C2(a), reports and sketches were also marked. Learned Munsiff on the evidence passed a preliminary decree directing partition of plaint A schedule property. Finding that Ext.B1 was valid and therefore under Exts.A1 and A3 the properties cannot be gifted to appellants, a decree was granted in the counter claim declaring that Exts. A1 and A3 are null and void under Ext.B1 appellant is the owner of counter claim schedule property.

3. Respondents/plaintiffs challenged the decree and judgment before Additional District Court, North Paravur in A.S.107/2005. Learned Additional District Judge on re-appreciation of evidence found that under Ext.B1, appellant had no pre-existing right and so he cannot claim right under Ext.B1 and Ext.B1 is only one page of the document and trial Court should not have relied on Ext.B1 and so Ext.A1 and A3 are valid. The appeal was allowed and the decree in respect of plaint A

schedule property was confirmed. The decree in the counter claim was set aside and appellant was restrained by a permanent prohibitory injunction in respect of plaint B schedule property. Defendant filed the appeal challenging the decree of the first appellate Court in respect of B schedule property.

4. Learned counsel appearing for the appellant was heard. Argument of learned counsel for the appellant is that though Ext.B1 is only part of the document, material part of the document is available and Ext.B1 prove that 36 cents was given to appellant and so Exts.A1 and A3 are void and in such circumstances, first appellate Court was not justified in ignoring Ext.B1 or interfering with the decree of the trial Court.

5. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. Availability of plaint A schedule property or the preliminary decree for division of that property was not challenged. Dispute is only with regard to plaint B schedule property which was claimed by respondents

under Ext.A1 and A3 and by appellant under Ext.B1. Rights under Ext.A1 and A3 are disputed on the ground that under Ext.B1, property was earlier given to appellant and therefore it cannot be thereafter gifted under Exts.A1 and A3. Hence if Ext.B1 cannot be relied on, then challenge as against Ext.A1 and A3 can only be rejected. Even according to appellant, he had no pre-existing right over the property covered under Ext.B1. Therefore, even if it is taken that Ext.B1 is a document where under the property of the father was settled in favour of appellant, unless it is by a registered document, appellant is not entitled to claim any right under Ext.B1. Section 123 of The Transfer of Property Act, 1882, mandates that transfer for the purpose of making a gift of immovable property, must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. As Ext.B1 is not a registered document, appellant cannot claim any right under Ext.B1. It that be so, as rightly found by first appellant under Exts.A1 and A3 the property can be transferred. Hence appellant cannot claim right over the

property transferred under Ext.A1 and A3 which are valid. Appellant is therefore not entitled to the relief sought in the counter claim. On the facts and evidence, no substantial question of law is involved in this appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
Judge

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